



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2011 REGULAR SESSION

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HOUSE BILL NO. 164

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FRIDAY, FEBRUARY 11, 2011

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The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED  
DATE March 16, 2011  
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ELAINE N. WALKER  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adles

1 AN ACT relating to the Uniform Adult Guardianship and Protective Proceedings  
2 Jurisdiction Act.

3 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
5 READ AS FOLLOWS:

6 *Sections 1 to 23 of this Act shall be known and may be cited as the Uniform Adult*  
7 *Guardianship and Protective Proceedings Jurisdiction Act.*

8 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
9 READ AS FOLLOWS:

10 *As used in Sections 1 to 23 of this Act:*

11 *(1) "Adult" means an individual who has attained eighteen (18) years of age;*

12 *(2) "Conservator" means a person appointed by the court to administer the property*  
13 *of an adult, including a person appointed under this chapter;*

14 *(3) "Guardian" means a person appointed by the court to make decisions regarding*  
15 *the person of an adult, including a person appointed under this chapter;*

16 *(4) "Guardianship order" means an order appointing a guardian;*

17 *(5) "Guardianship proceeding" means a judicial proceeding in which an order for*  
18 *the appointment of a guardian is sought or has been issued;*

19 *(6) "Incapacitated person" means an adult for whom a guardian has been*  
20 *appointed;*

21 *(7) "Party" means the respondent, petitioner, guardian, conservator, or any other*  
22 *person allowed by the court to participate in a guardianship or protective*  
23 *proceeding;*

24 *(8) "Person," except in the term "incapacitated person" or "protected person,"*  
25 *means an individual, corporation, business trust, estate, trust, partnership,*  
26 *limited liability company, association, joint venture, public corporation,*  
27 *government or governmental subdivision, agency, or instrumentality, or any*

other legal or commercial entity;

(9) "Protected person" means an adult for whom a protective order has been issued;

(10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property;

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued;

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought; and

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

A court of this state may treat a foreign country as if it were a state for the purpose of applying Sections 1 to 23 of this Act, but not including Section 18, 19, or 20 of this Act.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

(1) A court of this state may communicate with a court in another state concerning a proceeding arising under Sections 1 to 23 of this Act. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

1        ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
2 READ AS FOLLOWS:

3        (1) In a guardianship or protective proceeding in this state, a court of this state may  
4        request the appropriate court of another state to do any of the following:

5        (a) Hold an evidentiary hearing;

6        (b) Order a person in that state to produce evidence or give testimony pursuant  
7        to procedures of that state;

8        (c) Order that an evaluation or assessment be made of the respondent;

9        (d) Order any appropriate investigation of a person involved in a proceeding;

10       (e) Forward to the court of this state a certified copy of the transcript or other  
11       record of a hearing under paragraph (a) of this subsection or any other  
12       proceeding, any evidence otherwise produced under paragraph (b) of this  
13       subsection, and any evaluation or assessment prepared in compliance with  
14       an order under paragraph (c) or (d) of this subsection;

15       (f) Issue any order necessary to ensure the appearance in the proceeding of a  
16       person whose presence is necessary for the court to make a determination,  
17       including the respondent or the incapacitated or protected person; and

18       (g) Issue an order authorizing the release of medical, financial, criminal, or  
19       other relevant information in that state, including protected health  
20       information as defined in 45 C.F.R. sec. 160.103, as amended.

21       (2) If a court of another state in which a guardianship or protective proceeding is  
22       pending requests assistance of the kind provided in subsection (1) of this section,  
23       a court of this state has jurisdiction for the limited purpose of granting the  
24       request or making reasonable efforts to comply with the request.

25       ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
26 READ AS FOLLOWS:

27       (1) In a guardianship or protective proceeding, in addition to other procedures that

may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing shall not be excluded from evidence on an objection based on the best evidence rule.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
READ AS FOLLOWS:

(1) As used in Sections 7 to 15 of this Act:

(a) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf;

(b) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six (6) consecutive months ending within the six (6) months prior to the filing of the petition; and

(c) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining under Section 9 of this Act and subsection (5) of Section 16 of this Act whether a respondent has a significant connection with a particular state, the court shall consider:

(a) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) The location of the respondent's property; and

(d) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

Sections 7 to 15 of this Act provide the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO READ AS FOLLOWS:

A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

(2) On the date the petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more

1 appropriate forum; or

2 (b) The respondent has a home state, a petition for an appointment or order is  
 3 not pending in a court of that state or another significant-connection state,  
 4 and, before the court makes the appointment or issues the order:

5 1. A petition for an appointment or order is not filed in the respondent's  
 6 home state;

7 2. An objection to the court's jurisdiction is not filed by a person  
 8 required to be notified of the proceeding; and

9 3. The court in this state concludes that it is an appropriate forum under  
 10 the factors set forth in Section 12 of this Act;

11 (3) This state does not have jurisdiction under either subsection (1) or (2) of this  
 12 section, the respondent's home state and all significant-connection states have  
 13 declined to exercise jurisdiction because this state is the more appropriate forum,  
 14 and jurisdiction in this state is consistent with the constitutions of this state and  
 15 the United States; or

16 (4) The requirements for special jurisdiction under Section 10 of this Act are met.

17 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
 18 READ AS FOLLOWS:

19 (1) A court of this state lacking jurisdiction under Section 9 of this Act has special  
 20 jurisdiction to do any of the following:

21 (a) Appoint a guardian in an emergency for a term not exceeding ninety (90)  
 22 days for a respondent who is physically present in this state;

23 (b) Issue a protective order with respect to real or tangible personal property  
 24 located in this state; and

25 (c) Appoint a guardian or conservator for an incapacitated or protected person  
 26 for whom a provisional order to transfer the proceeding from another state  
 27 has been issued under procedures similar to Section 16 of this Act.

1 (2) If a petition for the appointment of a guardian in an emergency is brought in this  
 2 state and this state was not the respondent's home state on the date the petition  
 3 was filed, the court shall dismiss the proceeding at the request of the court of the  
 4 home state, if any, whether dismissal is requested before or after the emergency  
 5 appointment.

6 →SECTION 11. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
 7 READ AS FOLLOWS:

8 Except as otherwise provided in Section 10 of this Act, a court that has appointed a  
 9 guardian or issued a protective order consistent with Sections 1 to 23 of this Act has  
 10 exclusive and continuing jurisdiction over the proceeding until it is terminated by the  
 11 court or the appointment or order expires by its own terms.

12 →SECTION 12. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
 13 READ AS FOLLOWS:

14 (1) A court of this state having jurisdiction under Section 9 of this Act to appoint a  
 15 guardian or issue a protective order may decline to exercise its jurisdiction if it  
 16 determines at any time that a court of another state is a more appropriate forum.

17 (2) If a court of this state declines to exercise its jurisdiction under subsection (1) of  
 18 this section, it shall either dismiss or stay the proceeding. The court may impose  
 19 any condition the court considers just and proper, including the condition that a  
 20 petition for the appointment of a guardian or issuance of a protective order be  
 21 filed promptly in another state.

22 (3) In determining whether it is an appropriate forum, the court shall consider all  
 23 relevant factors, including:

24 (a) Any expressed preference of the respondent;

25 (b) Whether abuse, neglect, or exploitation of the respondent has occurred or is  
 26 likely to occur and which state could best protect the respondent from the  
 27 abuse, neglect, or exploitation;



1 (c) The length of time the respondent was physically present in or was a legal  
 2 resident of this or another state;

3 (d) The distance of the respondent from the court in each state;

4 (e) The financial circumstances of the respondent's estate;

5 (f) The nature and location of the evidence;

6 (g) The ability of the court in each state to decide the issue expeditiously and  
 7 the procedures necessary to present evidence;

8 (h) The familiarity of the court of each state with the facts and issues in the  
 9 proceeding; and

10 (i) If an appointment were made, the court's ability to monitor the conduct of  
 11 the guardian or conservator.

12 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
 13 READ AS FOLLOWS:

14 (1) If at any time a court of this state determines that it acquired jurisdiction to  
 15 appoint a guardian or issue a protective order because of unjustifiable conduct,  
 16 the court may:

17 (a) Decline to exercise jurisdiction;

18 (b) Exercise jurisdiction for the limited purpose of fashioning an appropriate  
 19 remedy to ensure the health, safety, and welfare of the respondent or the  
 20 protection of the respondent's property or prevent a repetition of the  
 21 unjustifiable conduct, including staying the proceeding until a petition for  
 22 the appointment of a guardian or issuance of a protective order is filed in a  
 23 court of another state having jurisdiction; or

24 (c) Continue to exercise jurisdiction after considering:

25 1. The extent to which the respondent and all persons required to be  
 26 notified of the proceedings have acquiesced in the exercise of the  
 27 court's jurisdiction;

1           2. Whether it is a more appropriate forum than the court of any other  
 2           state under the factors set forth in subsection (3) of Section 12 of this  
 3           Act; and

4           3. Whether the court of any other state would have jurisdiction under  
 5           factual circumstances in substantial conformity with the jurisdictional  
 6           standards of Section 9 of this Act.

7   (2) If a court of this state determines that it acquired jurisdiction to appoint a  
 8   guardian or issue a protective order because a party seeking to invoke its  
 9   jurisdiction engaged in unjustifiable conduct, it may assess against that party  
 10   necessary and reasonable expenses, including attorney's fees, investigative fees,  
 11   court costs, communication expenses, witness fees and expenses, and travel  
 12   expenses. The court shall not assess fees, costs, or expenses of any kind against  
 13   this state or a governmental subdivision, agency, or instrumentality of this state  
 14   unless authorized by law other than Sections 1 to 23 of this Act.

15       ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
 16 READ AS FOLLOWS:

17   If a petition for the appointment of a guardian or issuance of a protective order is  
 18   brought in this state and this state was not the respondent's home state on the date the  
 19   petition was filed, then in addition to complying with the notice requirements of this  
 20   state, notice of the petition shall be given to those persons who would be entitled to  
 21   notice of the petition if a proceeding were brought in the respondent's home state. The  
 22   notice shall be given in the same manner as notice is required to be given in this state.

23       ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
 24 READ AS FOLLOWS:

25   Except for a petition for the appointment of a guardian in an emergency or issuance of  
 26   a protective order limited to property located in this state under subsection (1)(a) or (b)  
 27   of Section 10 of this Act, if a petition for the appointment of a guardian or issuance of

1 a protective order is filed in this state and in another state and neither petition has been  
 2 dismissed or withdrawn, the following rules apply:

3 (1) If the court in this state has jurisdiction under Section 9 of this Act, it may  
 4 proceed with the case unless a court in another state acquires jurisdiction under  
 5 provisions similar to Section 9 of this Act before the appointment or issuance of  
 6 the order; and

7 (2) If the court in this state does not have jurisdiction under Section 9 of this Act,  
 8 whether at the time the petition is filed or at any time before the appointment or  
 9 issuance of the order, the court shall stay the proceeding and communicate with  
 10 the court in the other state. If the court in the other state has jurisdiction, the  
 11 court in this state shall dismiss the petition unless the court in the other state  
 12 determines that the court in this state is a more appropriate forum.

13 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
 14 READ AS FOLLOWS:

15 (1) A guardian or conservator appointed in this state may petition the court to  
 16 transfer the guardianship or conservatorship to another state.

17 (2) Notice of a petition under subsection (1) of this section shall be given to the  
 18 persons that would be entitled to notice of a petition in this state for the  
 19 appointment of a guardian or conservator.

20 (3) On the court's own motion or on request of the guardian or conservator, the  
 21 incapacitated or protected person, or other person required to be notified of the  
 22 petition, the court shall hold a hearing on a petition filed pursuant to subsection  
 23 (1) of this section.

24 (4) The court shall issue an order provisionally granting a petition to transfer a  
 25 guardianship and shall direct the guardian to petition for guardianship in the  
 26 other state if the court is satisfied that the guardianship will be accepted by the  
 27 court in the other state and the court finds that:

1 (a) The incapacitated person is physically present in or is reasonably expected  
2 to move permanently to the other state;

3 (b) An objection to the transfer has not been made or, if an objection has been  
4 made, the objector has not established that the transfer would be contrary to  
5 the interests of the incapacitated person; and

6 (c) Plans for care and services for the incapacitated person in the other state  
7 are reasonable and sufficient.

8 (5) The court shall issue a provisional order granting a petition to transfer a  
9 conservatorship and shall direct the conservator to petition for conservatorship in  
10 the other state if the court is satisfied that the conservatorship will be accepted by  
11 the court of the other state and the court finds that:

12 (a) The protected person is physically present in or is reasonably expected to  
13 move permanently to the other state, or the protected person has a  
14 significant connection to the other state considering the factors in  
15 subsection (2) of Section 7 of this Act;

16 (b) An objection to the transfer has not been made or, if an objection has been  
17 made, the objector has not established that the transfer would be contrary to  
18 the interests of the protected person; and

19 (c) Adequate arrangements will be made for management of the protected  
20 person's property.

21 (6) The court shall issue a final order confirming the transfer and terminating the  
22 guardianship or conservatorship upon its receipt of:

23 (a) A provisional order accepting the proceeding from the court to which the  
24 proceeding is to be transferred which is issued under provisions similar to  
25 Section 17 of this Act; and

26 (b) The documents required to terminate a guardianship or conservatorship in  
27 this state.

1       ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
2 READ AS FOLLOWS:

3     (1) To confirm transfer of a guardianship or conservatorship transferred to this state  
4       under provisions similar to Section 16 of this Act, the guardian or conservator  
5       shall petition the court in this state to accept the guardianship or conservatorship.  
6       The petition shall include a certified copy of the other state's provisional order of  
7       transfer.

8     (2) Notice of a petition under subsection (1) of this section shall be given to those  
9       persons that would be entitled to notice if the petition were a petition for the  
10      appointment of a guardian or issuance of a protective order in both the  
11      transferring state and this state. The notice shall be given in the same manner as  
12      notice is required to be given in this state.

13    (3) On the court's own motion or on request of the guardian or conservator, the  
14      incapacitated or protected person, or other person required to be notified of the  
15      proceeding, the court shall hold a hearing on a petition filed pursuant to  
16      subsection (1) of this section.

17    (4) The court shall issue an order provisionally granting a petition filed under  
18      subsection (1) of this section unless:

19      (a) An objection is made and the objector establishes that transfer of the  
20          proceeding would be contrary to the interests of the incapacitated or  
21          protected person; or

22      (b) The guardian or conservator is ineligible for appointment in this state.

23    (5) The court shall issue a final order accepting the proceeding and appointing the  
24      guardian or conservator as guardian or conservator in this state upon its receipt  
25      from the court from which the proceeding is being transferred of a final order  
26      issued under provisions similar to Section 16 of this Act transferring the  
27      proceeding to this state.

1 (6) Not later than ninety (90) days after issuance of a final order accepting transfer  
 2 of a guardianship or conservatorship, the court shall determine whether the  
 3 guardianship or conservatorship needs to be modified to conform to the law of  
 4 this state.

5 (7) In granting a petition under this section, the court shall recognize a guardianship  
 6 or conservatorship order from the other state, including the determination of the  
 7 incapacitated or protected person's incapacity and the appointment of the  
 8 guardian or conservator.

9 (8) The denial by a court of this state of a petition to accept a guardianship or  
 10 conservatorship transferred from another state does not affect the ability of the  
 11 guardian or conservator to seek appointment as guardian or conservator in this  
 12 state under this chapter if the court has jurisdiction to make an appointment  
 13 other than by reason of the provisional order of transfer.

14 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
 15 READ AS FOLLOWS:

16 If a guardian has been appointed in another state and a petition for the appointment of  
 17 a guardian is not pending in this state, the guardian appointed in the other state, after  
 18 giving notice to the appointing court of an intent to register, may register the  
 19 guardianship order in this state by filing as a foreign judgment in a court, in any  
 20 appropriate county of this state, certified copies of the order and letters of office.

21 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
 22 READ AS FOLLOWS:

23 If a conservator has been appointed in another state and a petition for a protective  
 24 order is not pending in this state, the conservator appointed in the other state, after  
 25 giving notice to the appointing court of an intent to register, may register the protective  
 26 order in this state by filing as a foreign judgment in a court of this state, in any county  
 27 in which property belonging to the protected person is located, certified copies of the

1 order and letters of office and of any bond.

2 ➔SECTION 20. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
3 READ AS FOLLOWS:

4 (1) Upon registration of a guardianship or protective order from another state, the  
5 guardian or conservator may exercise in this state all powers authorized in the  
6 order of appointment, except as prohibited under the laws of this state, including  
7 maintaining actions and proceedings in this state and, if the guardian or  
8 conservator is not a resident of this state, subject to any conditions imposed upon  
9 nonresident parties.

10 (2) A court of this state may grant any relief available under Sections 1 to 23 of this  
11 Act and other law of this state to enforce a registered order.

12 ➔SECTION 21. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
13 READ AS FOLLOWS:

14 In applying and construing the Uniform Adult Guardianship and Protective  
15 Proceedings Jurisdiction Act, Sections 1 to 23 of this Act, consideration shall be given  
16 to the need to promote uniformity of the law with respect to its subject matter among  
17 states that enact it.

18 ➔SECTION 22. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
19 READ AS FOLLOWS:

20 Sections 1 to 23 of this Act modify, limit, and supersede the federal Electronic  
21 Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., but do  
22 not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. sec. 7001(c), or  
23 authorize electronic delivery of any of the notices described in Section 103(b) of that  
24 Act, 15 U.S.C. sec. 7003(b).

25 ➔SECTION 23. A NEW SECTION OF KRS CHAPTER 387 IS CREATED TO  
26 READ AS FOLLOWS:

27 (1) Sections 1 to 23 of this Act apply to guardianship and protective proceedings

1 begun on or after the effective date of this Act.

2 (2) Sections 1 to 23 of this Act, except for Sections 7 to 15 of this Act, apply to  
 3 proceedings begun before the effective date of this Act, regardless of whether a  
 4 guardianship or protective order has been issued.

5 ➔ Section 24. KRS 387.520 is amended to read as follows:

6 (1) The District Courts shall have exclusive jurisdiction over all proceedings involving  
 7 a determination of partial disability or disability, the modification of orders, the  
 8 appointment and removal of guardians and conservators, and the management and  
 9 settlement of their accounts.

10 (2) If the respondent or ward is a resident of this state, the venue for all proceedings  
 11 under KRS 387.500 to 387.770 shall be:

12 (a) In the county where the respondent or ward resides;

13 (b) In the county of domicile of the respondent or ward; or

14 (c) In the county where the parent of the respondent or ward is domiciled if the  
 15 respondent or ward is a minor. Nothing in this section shall preclude transfer  
 16 of venue for good cause shown.

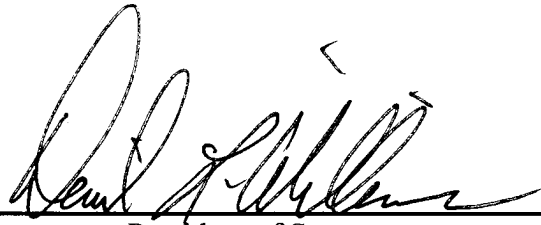
17 (3) If no local conservator has been appointed and no petition in a disability proceeding  
 18 is pending in this state, a domiciliary foreign conservator may file with a court in  
 19 this state in a county in which property belonging to the disabled person is located,  
 20 authenticated copies of his or her appointment and of any official bond he or she  
 21 has given. Thereafter, he or she may exercise as to assets in this state all powers of  
 22 a local conservator and may maintain actions and proceedings in this state subject to  
 23 any conditions imposed upon nonresident parties generally.

24 (4) This section shall be subordinate to Sections 1 to 23 of this Act to the extent that  
 25 those sections govern jurisdiction between Kentucky and other states.



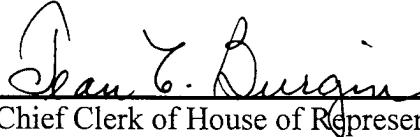


Speaker-House of Representatives



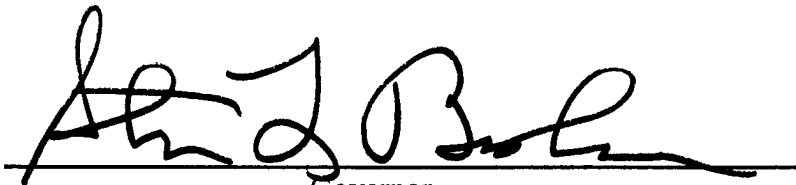
President of Senate

Attest:



Chief Clerk of House of Representatives

Approved



Governor

Date

3-16-11